

**DEQ OFFSHORE/COASTAL ENERGY PERMIT BY RULE
REGULATORY ADVISORY PANEL**

**DRAFT MEETING NOTES
TUESDAY, SEPTEMBER 28, 2010
DEQ PIEDMONT REGIONAL OFFICE TRAINING ROOM**

Meeting Attendees

<i>RAP MEMBERS</i>	<i>Interested Public</i>	<i>DEQ Staff</i>
Bob Bisha - Dominion	Emil Avram – Dominion - Alternate	Chris Egghart
Ray Fernnald - DGIF	Steve Haner – NG Shipbuilding	Bill Norris
Don Giecek – Invenergy - Alternate	Rick Reynolds – VDGIF - Alternate	Carol Wampler
Dan Holmes - PEC	Rick Thomas – Timmons Group	
Rene’ Hypes – DCR - DNN	David Tiller – Draper Aden	
Ron Jefferson - APCO		
Ken Jurman - DMME		
Patsy Kerr – U.S. Navy - Alternate		
Roger Kirchen - VDHR		
Laura McKay – VA CZM – DEQ - Alternate		
Jonathan Miles - JMU		
David Phemister – TNC - Alternate		
Chad Smith – PBS&J		
Mark Swingle – VA Aquarium		
Stephen Versen - VDACS		

NOTE: The following Offshore/Coastal Energy RAP members were absent from the meeting:

1. Welcome:

Carol Wampler, RAP Leader, welcomed RAP members and members of the interested public to this meeting of the Offshore/Coastal Energy PBR Regulatory Advisory Panel and asked for introductions from all of those in attendance. She noted that this group is a unique regulatory body since some members of the Original Wind Energy RAP have been asked to attend this meeting. The only official regulatory advisory body that is still officially active related to this action is the Offshore/Coastal RAP so this meeting is being conducted as an official meeting of that advisory body.

2. Review of Rulemaking Status:

Carol Wampler provided the group with a status report on the current rulemaking process on the Wind Energy Permit by Rule. Her overview included the following information:

- We are currently in the 2nd Public Comment Period for the proposed Wind Energy Permit by

Rule.

- The original RAP finished its work in early January. Staff made changes to the draft regulation based on the RAP discussions.
- The Director approved the draft regulatory language and the draft PBR proceeded through Executive Review, which was finished earlier this summer.
- A 60-Day Public Comment Period for this regulatory action ended on August 20th.
- In the interim, the Offshore/Coastal RAP was convened and met to discuss specific issues related to the development of wind energy projects in the coastal and nearshore areas of the Commonwealth that were not addressed by the original RAP. This RAP was not formed until spring 2010 because the Director of DEQ and the Director of the VMRC reached an agreement in summer 2009 that the specific requirements and conditions associated with the development of nearshore and coastal wind energy should not be addressed until after VMRC had completed its leasing study of the area that had been requested by the General Assembly. This study was completed and presented in March 2010.
- The Offshore/Coastal RAP met throughout the summer for a total of 6 times. The RAP came up with consensus-based recommendations based on the discussions of the RAP. Today's meeting is officially the 7th meeting of the RAP.
- The recommendations of the Offshore/Coastal RAP were submitted during the first comment period as public comments and have been incorporated into a new version of the PBR regulation that now includes all of the proposals to address Wind Energy in one document.
- Since the changes proposed by the Offshore/Coastal RAP are, in many cases, substantive changes to the original Wind Energy PBR, and since there were public comments received during the comment period that resulted in revisions to the proposed regulation, the decision was made to provide the public, through a 2nd public comment period, an opportunity to review and comment on those changes/recommendations. This 2nd Comment Period ends on October 5th.
- Following the end of the 2nd comment period, staff will review and respond to the comments received and make any necessary changes to the document. The revised regulation will then go for review and approval by the Director and then proceed through Executive Review for ultimate approval hopefully in time to meet the January 1, 2011, deadline.

QUESTION: During the 2nd Comment Period is the entire PBR open for comment or just those new pieces added or revised as a result of the recommendations of the Offshore/Coastal RAP and staff recommendations based on public comment?

Carol responded that we are asking specifically for comments on the changes, but will accept comments on all parts of the PBR if they are received. The purpose of this additional comment period is to provide an opportunity for the public to comment on the changes.

3. Purpose of Meeting:

Carol Wampler informed the meeting attendees that the purpose of today's meeting of the RAP is to have as complete a record as possible of the recommendations of the RAP on all of the changes made to the original Wind Energy PBR, including changes made by staff in response to public comments. This information will be provided to the Director for his review and consideration prior to his final

approval of the regulation. We would like to get the views of the RAP on all of these changes and would hope to achieve a “consensus recommendation” from the RAP as fully as possible for presentation to the Director.

4. Announcement:

Carol Wampler noted that this regulation is unique for the agency since, instead of being approved through the actions of a citizen’s board (e.g., State Water Control Board), this regulation will be approved by the department through the Director. This is the first program of this kind being handled by the department. In order to be as responsive to the public as we would be if this were a board action, there are plans being made for the Director to hold a public meeting to give an opportunity for public comment on the proposed regulation.

ACTION ITEM: The RAP members and commenters will be notified as soon as the date and time of the Director’s meeting have been finalized.

5. Provisions Where the Original RAP Did Not Reach Consensus:

Carol Wampler noted that there were three issues on which the original RAP did not reach consensus. These included: “provisions for field studies for avian resources in coastal areas”; “provisions for triggers for mandatory mitigation for wildlife – SGCN issues”; and “de minimis provisions.”

6. Field Studies for Avian Resources Discussions:

Consensus Agreement: It was agreed by all RAP attendees that the Offshore/Coastal RAP adequately addressed the provisions for “field studies for avian resources in the coastal area” and had reached a “consensus recommendation” to address those provisions.

7. Triggers for Mandatory Mitigation for Wildlife – SGCN Discussions:

Another issue where consensus was not reached in the original RAP was “triggers” – “triggers for mandatory mitigation for wildlife” and “Species of Greatest Conservation Needs (SGCN)” considerations. Inclusion of Tiers 1 & 2 SGCN vertebrates was not included in the proposed revisions to the document.

Position of the RAP Members: It was noted that there is no change of RAP members’ recommendations or positions related to SGCN from those noted in the original SGCN discussions held in January.

Discussions related to SGCN included the following:

- It was noted that the notes from the January 7th meeting, which was the last meeting where the issue of SGCN was discussed, contains a request for financial information from industry members related to consideration of SGCN. Was this information made available? Staff noted that information was received from industry members but that the costs of mitigation were not addressed; only the costs of the surveys were included.
- The issue of SGCN did not come before the Offshore/Coastal RAP.

- As a general matter, the department's interpretation of the statute is that, unless there are unique or special reasons for doing so, we are not going to make it harder to do renewable energy projects than to do other types of development. For Wind Energy projects, the proposed regulation requires mitigation for impacts to bats and for impacts on historic viewsheds that might not be required for regular projects; however, the unique and special impacts of wind projects on these resources is well-documented and accepted.
- It has not been shown that there is a unique impact associated with SGCN. Note: potential impacts to SGCN that are also listed as T&E are already addressed under the T&E provision.
- It was suggested that there may be some reason to look at specific species on the SGCN list for consideration of additional protections in ridge top development areas. There may be threats to specific species. There may be a need for surveys for and the implementation of mitigation measures to limit impacts to that habitat.
- It was noted that any ridge top development would have impacts for any and all projects and would not be necessarily limited to just wind energy projects. Proponents of including Tiers 1 & 2 SGCN vertebrates should be able to show a unique or special impact of wind projects that is different from or more serious than the impact of any kind of development in those ridge-top habitats.
- SGCN is a nonconsensus issue – an outstanding issue that was not resolved in the original RAP. The positions that members had in January are still the positions that they have today. The issue remains one of nonconsensus.
- It was suggested that there are ways that individual species on the SGCN list could be looked at that might prevent specific species from falling through the cracks rather than taking a blanket Tier I or Tier II approach.
- It was suggested that ridge tops for wind energy projects are unique and have a unique set of development approaches and concepts. It is a very sensitive habitat.
- It was suggested that the RAP did agree that surveys were necessary and did not agree that mitigation would not be required. Consequently, the proposed regulation requires the surveys; it does not at this point include SGCN as a trigger for mitigation.

ACTION ITEM: Staff suggested that RAP members who have specific concerns related to SGCN and see a need for possible consideration of SGCN in the regulation were asked to provide specific comments related to their concerns as part of the current public comment period so that they could be considered. It was noted that these comments would need to be convincing that there is a set of unique threats posed by wind projects to specific sensitive species and/or environments.

8. “De Minimis” Provisions Discussion:

The third item where the original RAP did not reach a consensus was “de minimis” - consideration of a project size category under which the PBR requirements would be reduced or would not apply.

Carol Wampler noted that at the end of the original RAP that the department had received informal advice from the OAG regarding recommended wording to address the “de minimis” question. A new attorney in the OAG has offered an opinion that differs somewhat from that previously received by the department. Staff modified the “de minimis” provisions in response to this informal advice, resulting in the requirement that projects over 500 kW and less than or equal to 5 MW call for notification of the project to DEQ and submission of local-government certification that the project meets land-use requirements.

Further, the Offshore/Coastal Wind RAP recommended that wind projects located in the CAPZ should contribute \$1000/MW toward research concerning the impact of turbines in those areas on avian resources. This was a RAP recommendation supported by all except one RAP member.

Based on public comment during the first public comment period, staff also “floated” a provision calling for submission of the desktop studies required for projects > 5 MW, along with reasonable mitigation for obvious resource threats. Staff is particularly seeking RAP input on this “desktop” provision.

Part III

Notification and Other Provisions for Projects of Five (5) Megawatts and Less

9VAC15-40-130. Small wind energy projects of less than 5 megawatts and Less.

- A. *The owner or operator of a small wind energy project with a rated capacity equal to or less than 500 kilowatts is not required to submit any notification or certification to the department.*
- B. *The owner or operator of a small wind energy project with a rated capacity ~~greater than~~ between 500-501 kilowatts and less than 5 megawatts shall:*
- 1. ~~notify~~ Notify the department by submitting a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances and applicable local government requirements;*
 - 2. Submit the desktop surveys described in 9VAC15-40-40 A 1 and 9VAC15-40-40 B 1; if the desktop surveys indicate the presence of T&E species within the disturbance zone, or of known historic resources within the disturbance zone and within one-half mile of the boundary of the disturbance zone, then the applicant shall submit a mitigation plan detailing reasonable actions to avoid, minimize, or offset adverse impacts on these resources; and,*
 - 3. For projects located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones map, contribute \$1,000.00 per megawatt of rated capacity, or partial megawatt thereof, to a fund designated by the department in support of scientific research investigating the impacts of projects in Coastal Avian Protection Zones on avian resources.*

RAP discussions on the issue of the “de minimis” provisions included the following:

- The full PBR kicks in for projects over 5 megawatts.
- The use of 501 kilowatts as the cut-off was questioned. It was suggested that use of “501” would allow projects of 500.5 kilowatts to fall through the cracks. The RAP suggested that the wording be revised back to “greater than 500 kilowatts.”
- It was suggested that the language should be “5 megawatts or less” instead of the proposed “5

megawatts and less.”

- It was suggested that instead of the use of the phrase “between 500 kilowatts and 5 megawatts” that it would be clearer if the phrase “greater than 500 kilowatts and equal to or less than 5 megawatts” was used.

ACTION ITEM: Staff will make the change to the phrase “greater than 500 kilowatts and equal to or less than 5 megawatts” where needed throughout the document.

Section 9VAC15-40-20 needs to be revised to incorporate this recommendation:

”...The department has determined that a permit by rule is required for small wind energy projects with a rated capacity ~~equal to or~~ greater than 5 megawatts...”

- It was noted that the basic requirement is for the applicant to notify the department by submitting a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances.
- A question was raised over the possibility of a “by-right” type of development and whether a locality would be able to provide the needed certification? Yes. The locality would be able to say with regard to certification that the project did comply with all applicable land use ordinances and applicable local government requirements.
- This requirement provides an assurance that the project has been looked at by the locality.
- It was noted that the upper and middle tiers would be covered under the PBR while the lower tier (projects equal to or less than 500 kilowatts) would likely not fall under the purview of the PBR. It was noted that in some case it is preferable to have “coverage under a PBR” so in the future if it is decided that this needs to be the case, the regulation could be revised (during one of the periodic “4-year” regulation review cycles).
- The RAP reviewed the language proposed for “avian resources” in 9VAC15-40-130 B 3. This was language that originally had consensus support from the Offshore/Coastal RAP with the exception of one negative vote. It was noted that there was also one proviso raised with regard to having the same kind of consideration for contribution of a like amount for impacts to historic resources that should be considered during any future revisions to the regulations but would not be pursued at this time. After discussions, the position of the RAP is still one of consensus with one negative vote.
- DCR presented an alternate approach to dealing with the impacts on “avian resources.” They agreed with the use of the “de minimis” amount in mountainous areas but had concerns over the use of a “de minimis” provisions in the coastal zones to provide protection for avian resources. They suggested that there was a potential for adverse impacts to avian species in those areas from a project of even just one turbine and that additional requirements should be added to address those potential impacts. It was suggested that while the approach may have been worthy of consideration earlier in the process and may need to be revisited in the future that at this stage of the process that it was not appropriate to consider this type of new requirement.
- It was noted that the current proposal is for an applicant for a project within this category (small wind energy projects of greater than 500 kilowatts and equal to or less than 5 megawatts) to provide notification of local government certification; to do desktop surveys under certain conditions and to contribute \$1,000 per megawatt of rated capacity in certain areas of the Coastal Avian Protections Zones. The RAP purposely did not include other requirements from

the full PBR requirements in order to provide for a “de minimis” provision for projects of this size.

- The areas noted in item #3 are those areas that were identified through research where there is so much evidence of the magnitude and critical nature of avian resources where for projects in this middle tier (greater than 500 kilowatts and equal to or less than 5 megawatts) that are planned for these specific areas of the Coastal Avian Protection Zones Map the applicant would do a mini-mitigation, which would be a contribution of \$1,000 per megawatt of rated capacity in support of scientific research on impacts to avian resources. Staff noted that the original proposal was for a contribution of \$5,000 which was “tiered” to require \$1,000/MW to provide for this “di minimis provision” for this category of project and in these specific coastal areas.
- It was noted that the economics for “small” projects is different from those of larger projects. In other states, projects consisting of only one or two turbines are offered incentives from the state. In some cases projects of this size (especially for ski resources, military or schools, with a high end use) the energy generated would go in many cases directly to the user. In these cases the cost of the potential mitigation can be borne by the end-user or by both the utility and the end-user. There are different economics between larger projects and small projects with only one or two wind turbines.
- Staff noted that the baseline that we are starting with is this regulation is replacing current SCC requirements. The SCC currently totally exempts projects of 5 megawatts or below. As a matter of policy it is a difficult argument to make that we improving the process by including these requirements and making it harder for this category of projects.
- It was noted that there is a lack of research on the potential impacts of these smaller projects. Given that we don’t have incentives for projects of this nature may be this is an arena to find funding from the state or federal government. We don’t want to scare a small one or two turbine project away.
- Staff suggested that we need local government outreach to explain and/or encourage the use of renewable energy.
- We do need research for smaller scale projects as well as the larger scale projects.
- It was suggested that there is some data available from projects in New York and the New England area. There has not been much evidence that the impacts have been troublesome for the smaller projects. It is important to recognize that projects of this size are a niche industry and they work on a very tight margin. We need to be careful to not scare them off. The \$1,000 per megawatt fee for research for avian resources seems to be reasonable.
- The RAP indicated that there was no support for the addition of other requirements for these projects that were proposed by DCR.
- Staff noted that item #2 in the proposed regulation regarding the “di minimis provision” regarding “desktop surveys” was a topic that was never discussed by the Offshore/Coastal RAP. This item was added as a result of comments submitted during the public comment period by the Nature Conservancy (TNC) and an additional commenter. The Nature Conservancy had only suggested the addition of the requirement to perform a “desktop survey.” After internal discussions and consideration of comments it was decided by staff that there should be an accompanying requirement as a response to the findings of the desktop survey. It was appropriate to ask for reasonable and proportionate mitigation based on the findings of the desktop surveys. The regulation has been revised to include a requirement for mitigation that includes “reasonable actions to avoid, minimize, or offset adverse impacts on these resources” (T&E species and known historic resources).

- It was noted that TNC had proposed the inclusion of the desktop survey for this middle tier of projects was based on how little we know of these projects and their possible impacts; where the project is located and what resources would and will be impacted. It was anticipated that over the course of 4 years (the period of time during which the regulation would need to be reviewed) that more information would be available and changes made to the regulation as needed.
- It was suggested that it would be inappropriate for DEQ to ask for a desktop survey and to then have information of an impact or potential impacts and have no mechanism in place within the regulation to consider requiring mitigation of those adverse impacts. As long as a desktop survey is being required then the potential for mitigation should be added. For DEQ to do nothing is not always the biggest advantage to Industry. The provision for DEQ to require mitigation provides a mechanism in place for DEQ to react to.
- A question was raised regarding the use of the terms “and” and “or” in this section (#2) and throughout the regulation. It was agreed that the term phrase should be “...known historic resources within the disturbance zone ~~and-or~~ within one-half mile of the boundary of the disturbance zone...” These are inclusive statements not exclusive, it is “either or.”

ACTION ITEM: Staff will look at the use of the terms “and” and “or” in this section and throughout the regulation and make the appropriate revisions to the document.

- It was suggested that the mitigation plan should describe “reasonable and proportional” actions to avoid, minimize, or offset adverse impacts on these resources.
- It was suggested that this provision should apply to Bats as well as T&E species. It was suggested that the reason that Bats are attracted to these projects may be that the structure is viewed as the largest tree in the landscape.
- Staff noted that the question is if we agree that the resource needs to be protected and we don’t know the impacts of a 1 or 2 turbine projects do we put in some form of mini-requirement in the PBR to deal with them?
- It was noted that if we add some mechanism for DEQ to respond to the results of a desk survey that it needs to be reasonable and appropriate. Whatever measures are taken should not be overly burdensome over what is required by the SCC. Certainty is important.
- It was noted that it doesn’t matter if you have a big project or a small scale project, if you impact (kill) a T&E species (either State or federal) someone will come after you but it won’t be DEQ.
- It was suggested that a variation of this requirement could be the inclusion of a Cap on mitigation costs. In section #3 we are talking about \$1,000 per megawatt in sensitive Coastal areas. This is an acknowledgment that it is hard to mitigate in certain areas – e.g., curtailment has not been shown to be effective in significantly reducing avian fatalities. It was suggested that the requirement in #2 could be reworded to include some level of a CAP (a not to exceed figure) on research or post-construction monitoring liabilities for this scale of projects. It was noted that this could also be considered as a form of mitigation.
- It was noted that the impacts to historic resources are known at the time of project development. The presence of a historic resource doesn’t necessarily equate to an impact on the resource. The analysis component is missing from this requirement.
- It was suggested that including a dollar figure for projects this small was not appropriate.
- It was suggested that we should be offsetting “obvious” adverse impacts on these resources.

- It was suggested that finding T&E or historic resources on a proposed site may be considered as “fatal flaws.” If T&E or historic resources are found then it might be appropriate for the applicant to relocate their proposed project.
- A minimum requirement to identify these “fatal flaws” is to continue to include the requirement for doing “desktop surveys.”
- It was suggested that we are giving “desktop surveys” a little more credit than it deserves. The database only gives you an idea that there is a species within a 2 mile radius search area. If there is an indication that a species is present in this area then further follow-up with DCR and DGIF is needed to clarify these findings.
- DGIF noted that they would need to set up a separate protocol for addressing inquiries for information for Wind Energy projects. These projects would require a specialized data inquiry.
- Staff asked the RAP members for their preference on inclusion or revision of item #2 in the proposed regulation. Individual RAP members’ comments included the following:
 - As written makes sense;
 - Looking at from a very high level – desktop only;
 - Support desktop and any type of research and mitigation with a CAP on research;
 - Like having the desktop in the regulation – provides a good warning system – support a cap on research;
 - Support desktop surveys – provide useful information – helps to identify fatal flaws;
 - Do not remove #2 – leave desktop in;
 - Can live with #2 as it is – can live with a limited payment into research;
 - In favor of leaving it as it is;
 - Comfortable with desktop survey – very well defined exposure;
 - Like a tiered approach – the financial contribution could be addressed in guidance – the CAP means not to exceed;
 - In favor of #2 as it stands;
 - Should have desktop surveys – don’t know that mitigation should be in there – should require consultation with the agency if desktop surveys indicate the presence of T&E species or historic resources;
 - Agree with requiring “consultation with agency” along with the desktop survey;
 - Support as written – presence of historic resources does not necessarily result in significant adverse impacts – small projects could have impacts on multiple resources; both wildlife and historic resources;
 - Desktop is essentially a no-brainer – there should be a consultation phase – no problem with the way that it is written – can live without including bats if needed (in some cases bats will be included in the consideration of T&E species).
 - If you are going to seek out the information you need to provide a means of dealing with the findings; desktop survey definitely – mitigation covers a wide range of choices including providing a financial contribution to research – any CAP should be a maximum amount.
- Staff noted that this issue is of great importance to the department. It is important for us to try to reach consensus. We welcome further comments on these issues and on SGCN. RAP appears to be close to reaching some level of consensus on the wording of “de minimis” paragraph #2. Staff noted that the RAP will not be disbanded at this time.

9. Description of the \$5,000 CAP:

The RAP discussed the use of the \$5,000 CAP on the combined cost of mitigation and post-construction monitoring for wind energy projects under the full PBR (i.e., for projects > 5 MW). The original RAP reached consensus that this cost should be capped at \$5000/turbine/year; however, there were several ways proposed of calculating this amount (and to correct the amount correctly over time), and the original RAP asked DEQ staff to select the method they thought best. Subsequently, a RAP member raised in public comment whether DEQ had chosen the correct method of calculating the amount. Discussions included the following:

- Staff noted that one of the options is to express this CAP as \$5,000 per year per turbine plus GDPIPD. It was noted that this equated to 119 hours of curtailment. The director wanted to use the curtailment equivalent of 120 hours. DPB liked the use of the round up figure of 120 hours of curtailment per year per turbine. This item was not discussed in the Offshore/Coastal RAP.
- It was suggested that it would be more appropriate to use the \$5,000 GDPIPD figure as the calculation.
- A question was raised as to whether the proposed 120 hours is equivalent to \$5,000 per turbine per year? It was noted that there is nothing in the meeting notes of the last RAP meeting regarding this equivalence calculation.
- A question was raised as to where the 119 hours figure came from?
- It was noted that the calculations and the use of the hour figures instead of the dollar amount was outlined in a handout that was discussed at the last meeting of the original RAP. The question is whether the 119 hour figure has gotten the same level of discussions as the \$5,000 plus GDPIPD figure.
- Staff noted that the intent was to come up with the same amount of money. Three methods of calculation were presented to and discussed by the RAP. No question was raised that any of the methods did not correctly calculate the \$5000 agreed-upon concept. The consensus of the RAP was to recommend the \$5000 cap and to leave it to DEQ staff to select a calculation method for the regulation.

ACTION ITEM: Staff asked any RAP members who are interested in this issue to provide their comments and opinions as to whether the 120 hours that is currently in the regulations is an accurate or inaccurate method of calculating the \$5000 equivalent. If they believe that it is not accurate, then they were asked to provide the numbers that show this and to provide justification for the calculation method that they recommend. The question is how to express the curtailment figure of \$5,000 per turbine per year, corrected over time? The question that RAP members need to respond to is whether you think that the method DEQ chose to express the curtailment limitation is accurate or not. If you think that it is not accurate then you need to respond ASAP and let us know. If you think that it is accurate also please provide that in your comments. The comment period ends on October 5th.

- The question is whether we are defining the pot of money accurately by using the 120 hours figure?
- It was noted that we need to ensure that the methodology used to identify the mitigation moneys for curtailment is accurate.
- Staff noted that DPB liked the concept of the 120 hours. Staff would need justification to go back to the director and DPB with a different approach.

- Does the use of 120 hours of curtailment give you \$5,000?
- The equivalency question is the issue.

10. Public Participation Provisions:

Staff advised RAP members that a number of changes had been made to the proposed regulation in response to public comment, especially to the sections dealing with public participation. Staff noted the following:

- Section 9VAC15-40-30 restates the 14 statutory requirements and provides for the initial notice requirement (9VAC15-40-30 A 1), while 9VAC15-40-90 expands the statutory requirements for public participation (statutory requirement 13). There are two times where we ask for notice.
- Revised section 9VAC15-40-30 A 1 provides that a notice of intent be submitted “as early in the project development process as practicable.”
- Revised section 9VAC15-40-90 A provides for the owner or operator to “publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation.”
- The proposed revisions change the use of “summary” to “actual data and supporting documents” in 9VAC15-40-40 A 8; 9VAC15-40-40 B 4; 9VAC15-40-60 B 6 a; 9VAC15-40-90 A. The sections were revised to reflect a need for the actual data and documentation instead of just a summary.

The RAP members did not raise any concerns with these changes that staff made in response to public comments.

Proposed Revisions by DGIF – Section 9VAC15-40-60 B 6:

The following revisions were proposed to 9VAC15-40-60 B 6:

6. *Post-construction wildlife mitigation and management shall include the following:*

a. Post-construction mitigation. After completing the initial one (1) year of post-construction monitoring, the owner or operator shall submit the first year's monitoring data and a revised mitigation plan detailing the ~~consisting of his proposed~~ monitoring and mitigation actions expected to be implemented for the remainder of the project's operating life. Such mitigation actions shall be designed to address the impacts revealed by the initial year of post-construction monitoring. One (1) year after the revised mitigation plan is submitted, and annually thereafter, the owner or operator shall submit a report consisting of the following: results of ongoing monitoring, including a presentation of field data; a discussion on the effectiveness of mitigation actions taken during the reporting year; and documentation showing expenditures and lost revenues attributable to curtailment, other mitigation actions, and monitoring.

It was noted that the reason that this proposal was being suggested is to place the burden on the applicant to present information in a narrative manner so that these requirements don't become just a "data dump" with no explanation being provided. Staff agreed to work on incorporating the substance of DGIF's concern.

11. Meeting Adjourned

Carol Wampler thanked all of the meeting attendees for their participation and input. The meeting was adjourned at 1:50 PM.